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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 93M-318  
31648

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In re Applications of

MARTHA J. HUBER

RITA REYNA BRENT

MIDAMERICA ELECTRONICS SERVICE, INC.

STATON COMMUNICATIONS, INC.

For Construction Permit for a  
New FM Station on Channel 234A  
in New Albany, Indiana

) MM DOCKET NO. 93-511 ✓

) File No. BPH-911114ME

) File No. BPH-911115MC

) File No. BPH-911115ML

) File No. BPH-911115MU

MEMORANDUM OPINION AND ORDER

Issued: June 1, 1993; Released: June 2, 1993

Background

1. This is a ruling on a Motion To Enlarge Issues filed by Rita Reyna Brent ("Brent") on April 26, 1993. An Opposition was filed by Staton Communications, Inc. ("Staton") on May 11, 1993. A Reply was filed by Brent on May 17, 1993.

2. Brent seeks to have the following issue added against Staton:

To determine whether Staton Communications, Inc. is financially qualified to be the Commission licensee of an FM station at New Albany, Indiana.

For reasons stated below, the issue will be added.

Facts

3. In initial discovery through the standard production of documents, Staton produced a letter from Home Trust Bank (the "bank") dated November 15, 1991. The letter was signed by Mr. W. A. Gainey, Senior Vice President and Director of Lending. It is noted that the letter was dated the same date that Staton's Form 301 application was filed with the Commission.

4. The letter must be considered in light of the applicant's structure. Staton is a two tiered applicant: Ms. Mildred Staton owns the Class A voting stock and 20% of the equity; and Kenneth L. Ramsey owns the nonvoting stock and 80% of the equity. All of the authorized stock, both voting and non-voting, are issued and outstanding. Staton's articles of incorporation provide that nonvoting stockholders have investment rights only. The articles specify the activities that Mr. Ramsey is precluded from

performing and provide language which insulate nonvoters from involvement in the management and operation of the business. The only exception is for "making loans to, or acting as surety for, the business." Thus, the organic document of the corporation reflects that Mr. Ramsey is to be totally passive, except for loans and suretyships.

5. The bank letter provides for a "conditional commitment to loan up to \$425,000." It is addressed to both Ms. Staton and Mr. Ramsey. The letter states in the last paragraph:

This bank is favorably acquainted with you and we would be relying on your commitment to continued participation in the venture and the management of the radio station as a part of the loan application.

In its Opposition, Staton submits an explanatory Declaration from Mr. Gainey dated April 30, 1993, wherein he states that through other business deals he was familiar with Mr. Ramsey's personal financial condition. The Declaration further states:

Mr. Ramsey made it clear, and I understood, that he would not personally be involved in the management of the radio station. He indicated, rather, that the other proposed owner, Ms. Mildred Staton, would manage the station on a day to day basis. I understood, based on my review of her resume, that Ms. Staton had considerable experience as a broadcaster.

The Declaration further states:

The wording of the last sentence in my November 15, 1991 letter intended to indicate that we were acquainted with Mr. Ramsey and that we would be relying on his and Ms. Staton's continued participation in the venture, and that we assumed Ms. Staton would manage the radio station

6. The Declaration does not negate the existence of a substantial question of fact regarding the bank's insistence in November 1991 that Mr. Ramsey have an active role in management as a condition to any future loan. The only business person with whom the bank has familiarity is Ramsey. In fact, Mr. Gainey "had contacts with Mr. Ramsey in connection with some of his other ventures." See Declaration at Para.2. It was through those former contacts that Mr. Gainey acquired knowledge of Ramsey's financial worth. There is no mention of any similar familiarity with Ms. Staton. The plain meaning of the letter of November 1991 reflects Mr. Gainey's favorable familiarity with Ramsey and therefore a reasonable reliance by the bank on Mr. Ramsey's "continued participation in the venture and the management of the

radio station."<sup>1</sup> While the facts do not warrant an added issue of real party-in-interest, the facts do warrant an issue as to whether there was a valid bank letter on November 15, 1991 on which Staton could rely for a reasonable assurance. Frank Diigesu, Sr., 7 F.C.C. Rcd 5459, 5460 (Comm'n 1992). Since the bank is now aware of the insulation of Mr. Ramsey from the station's business and operations, there also is a substantial question as to whether there is a presently valid bank commitment.<sup>2</sup> It is noted that the bank has not issued a new letter which removes the condition that Ramsey be involved in the management of the station.

#### Rulings

Accordingly, IT IS ORDERED that the following issues are added:

- A. To determine whether, at the time it filed its application, Staton Communications, Inc. was financially qualified to construct and operate its proposed FM station at New Albany, Indiana.
- B. To determine whether, at the present time., Staton Communications, Inc. is financially qualified to construct and operate its proposed FM station at New Albany, Indiana.
- C. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Staton Communications, Inc. is qualified to receive a Commission permit to construct and operate its proposed FM station at New Albany, Indiana.

IT IS FURTHER ORDERED that the burden of proceeding and the burden of proof ARE ASSIGNED to Staton Communications, Inc.

IT IS FURTHER ORDERED that discovery SHALL COMMENCE within three days of the release of this ruling; that documents identified by Brent

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<sup>1</sup> Since the letter was dated the same date as the application, Mr. Gainey may have felt a need to rely on Mr. Ramsey because there was no time to make a due diligence inquiry about Staton's proposal.

<sup>2</sup> The Declaration of Mr. Gainey dated May 1993 is not accepted as an interpretation which negates the 1991 representation that the bank was relying on Mr. Ramsey being involved in the business. If Mr. Gainey is changing the plain language of the letter, his present intentions can only be determined through discovery and litigation. However, Mr. Gainey now knows of the insulation of Mr. Ramsey. He should be asked under oath whether the bank will still go forward with its commitment and issue another letter without the condition about Mr. Ramsey's involvement or with an acknowledgement that he will only remain with the application as a passive investor.

SHALL BE PRODUCED within thirteen days of the release of this ruling; and that all depositions will be noticed within twenty days of the release of this ruling.<sup>3</sup>

## FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel  
Administrative Law Judge

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<sup>3</sup> It is noted that Brent's Motion To Enlarge Issues has included the request for documents which is self-executing under the new procedures. 47 C.F.R. §1.229(e). The scope of the request is reasonable. Brent must submit any subpoena request for bank discovery within twenty days of the release of this ruling. All efforts to arrange for voluntary compliance by the bank will be made, recognizing that banks as a matter of policy require a subpoena as a condition to disclosing documents in their possession. However, Mr. Ramsey's and Ms. Staton's full cooperation is expected. It also is expected that the hearing date of August 10, 1993, will remain firm and that Staton can present evidence on the added issues immediately following its comparative case.